

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 697 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

TAKHATSINH @ MADHAJI

HEMANTSINGH

Versus

NANDKUVARBEN MAHIPATSINHJI

Appearance:

MR HD VASAVADA for Petitioner

MR SATYEN B RAWAL for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/09/98

ORAL JUDGEMENT

This is a revision in a suit for eviction on the ground that the defendant is a trespasser. The say of the plaintiff is that she purchased suit premises for residential purpose vide registered Sale Deed dated 6.5.1977. It is also averred that when she purchased the house at that time one Pranlal Shivilal Shah was a tenant of one room and some portion of the house. Pranlal Shah vacated the said premises and handed over the possession

to her. Thereafter, the defendant trespassed in the suit premises without her permission. Some criminal complaints were also filed against the defendant. The defendant filed written statement stating that Pramlal Shivilal Shah has not vacated the premises and he has not handed over the possession to the plaintiff. He also denied that he is residing in the contentious house without permission of the plaintiff. The defendant also pleaded ignorance of purchase of the house by the plaintiff. Both the courts below found that the defendant is a trespasser and therefore passed a decree for eviction.

It is contended by Mr. Vasavda, learned counsel for the petitioner that the suit could not have been decreed in the absence of original tenant Pramlal Shivilal Shah as a party defendant. He further submits that Shri Pramlal Shah has not been examined. The contention is that the defendant petitioner is sub-tenant and is living in the premises prior to the purchase of the property by the plaintiff lady. It is also submitted that the particulars of the suit property did not tally. He further submits that it was not possible in absence of Pramlal Shah being a party to the suit. It is also contended that in absence of notice of demesne of possession, the suit itself was not maintainable.

I have heard learned counsel for the parties and perused the judgement of both the courts below. It is to be made clear that the suit filed by the plaintiff is suit simpliciter for eviction of trespasser. It is not to be confused with the suit for eviction under the provisions of the Bombay Rent Control Act. It is not the case of the defendant that he was inducted as a tenant in the premises. The defendant failed to show his legal entry in the suit premises. His own say is that he is a sub-tenant of Pramlal Shah. He cannot continue in the premises, even as a sub-tenant as per his own saying. In view of this, the presence of Pramlal Shah in the suit is not necessary. Mr. Vasavda at the conclusion of the arguments says that in such case the standing practice of this court is to remit the matter to the trial court for a specific finding. I am not aware of such practice. A matter can be remitted if there is such requirement of law in a facts of the case. I find no merit in this revision application and the same is accordingly rejected. Notice discharged. Interim relief vacated.

Learned counsel says that some time may be granted for vacating premises. This prayer is declined for the simple reason that no time can be granted to a trespasser to vacate the same. It is next contended that

the operation of the order may be stayed as the petitioner intends to approach the apex court. Since the matter is not entertained at the admission stage, no question of staying the operation of the order arises. It is next contended that the petitioner was protected by this court pending admission therefore interim relief granted by this court may be continued for some time. As I have found the petitioner as a trespasser, the prayer is declined.

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